

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 201907695	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/28/2019 12:03 AM	Location of Incident: Jerome Avenue and Risse Street	Precinct: 52	18 Mo. SOL 2/28/2021	EO SOL 10/15/2021	
Date/Time CV Reported Thu, 08/29/2019 9:52 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/29/2019 9:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Garry Tuma	20648	959317	052 PCT
2. POM Steven Torres	19874	962846	052 PCT
3. SGT Frank Aliffi	00234	939856	052 PCT
4. POF Gina Mestre	11607	955191	052 PCT
5. POM James Lindquist	06307	955068	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Montera	07819	961961	052 PCT
2. POM Edgar Rivera	05576	955381	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Garry Tuma	Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)	
B.POM Steven Torres	Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)	
C.POM Garry Tuma	Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)	
D.POM Steven Torres	Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)	
E.POM Garry Tuma	Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)	
F.POM Steven Torres	Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)	
G.POM Garry Tuma	Abuse: Police Officer Garry Tuma threatened to arrest § 87(2)(b)	
H.POM Garry Tuma	Abuse: Police Officer Garry Tuma searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi searched § 87(2)(b)	
J.POF Gina Mestre	Abuse: Police Officer Gina Mestre searched the vehicle in which § 87(2)(b) was an occupant.	
K.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
L.POM Steven Torres	Abuse: Police Officer Steven Torres frisked § 87(2)(b) [REDACTED]	[REDACTED]
M.POM Steven Torres	Abuse: Police Officer Steven Torres searched § 87(2)(b) [REDACTED]	[REDACTED]
N.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
O.POM James Lindquist	Abuse: Police Officer James Lindquist searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]

Case Summary

On August 28, 2019, § 87(2)(b) filed this complaint with the CCRB by phone. Two phase 2 spinoffs were generated under #201908675 and #201908677 and were sent to IAB and the DA.

On August 28, 2019, at approximately 12:03 a.m., in the vicinity of Risse Street and Jerome Avenue in the Bronx, § 87(2)(b) was driving his vehicle with § 87(2)(b) and § 87(2)(b) sitting in the back when they were pulled over by PO Garry Tuma and PO Steven Torres, of the 52nd Precinct. PO Tuma and PO Torres approached the vehicle and allegedly drew their guns and pointed them at the vehicle (**Allegations A, B, C, D, E, and F: Force - Gun pointed, § 87(2)(g)** PO Tuma asked § 87(2)(b) for his driver's license and registration and after § 87(2)(b) refused multiple requests, PO Tuma told § 87(2)(b) he could go to jail (**Allegation G: Abuse of Authority - Threat of Arrest, § 87(2)(g)** At this point, § 87(2)(b) began having a seizure. PO Tuma and PO Torres called for backup and an ambulance. PO Tuma opened the back door of § 87(2)(b)'s vehicle and leaned in to check on § 87(2)(b) (**Allegation H: Abuse of Authority – Vehicle search, § 87(2)(g)** § 87(2)(g)

While they were waiting for an ambulance to arrive, Sgt. Frank Aliffi, PO Gina Mestre, PO James Lindquist, PO Christopher Montera, and PO Edgar Rivera of the 52nd Precinct arrived on scene. The ambulance arrived and Sgt. Aliffi instructed PO Tuma to search § 87(2)(b)'s bag before he entered the ambulance (**Allegation I: Abuse of Authority – Search (of person), § 87(2)(g)** § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) exited the vehicle and went to the ambulance. PO Mestre approached § 87(2)(b)'s passenger window and asked § 87(2)(b) to step out of the vehicle. PO Mestre reached into § 87(2)(b)'s vehicle and picked up an expired MTA bus operator placard from the passenger seat (**Allegation J: Abuse of Authority – Vehicle search, § 87(2)(g)** § 87(2)(b) refused to exit the vehicle and Sgt. Aliffi said, “We’re gonna take you out. There’s no debating. Come out of the car or we’re going to have to pull you out” (**Allegation K: Abuse of Authority – Threat of force, § 87(2)(g)** § 87(2)(b) stepped out of the vehicle and PO Torres frisked him and allegedly searched him (**Allegation L: Abuse of Authority – Frisk, § 87(2)(g)** and **Allegation M: Abuse of Authority – Search (of person), § 87(2)(g)** § 87(2)(g)

§ 87(2)(b) went to the back of the vehicle and Sgt. Aliffi asked him how old he was, and he refused to answer. Sgt. Aliffi then said, “If you continue to give us a hard time you can go to jail, and you can explain it to a judge” (**Allegation N: Abuse of Authority – Threat of arrest, § 87(2)(g)** While everyone was at the back of the vehicle, PO Mestre and PO Lindquist searched the inside of § 87(2)(b)'s vehicle (**Allegation O: Abuse of Authority – Vehicle search, § 87(2)(g)** § 87(2)(b) was then arrested and transported to the 52nd Precinct stationhouse.

This incident resulted in § 87(2)(b)'s arrest (§ 87(2)(b) for possession of stolen property (**BR 40**). He also received two summonses: #§ 87(2)(b) for an inadequate brake light and #§ 87(2)(b) for failing to comply with a lawful order (**BR 35**).

The investigation obtained eight body-worn camera videos (**BR 01, BR 02, BR 03, BR 04, BR 05, BR 06, BR 07, and BR 08; videos and BR 09, BR 10, BR 11, BR 12, BR 13, BR 14, BR 15, and BR 16; summaries**) and relevant portions are discussed below. The investigation also obtained one surveillance footage video (**BR 17; video and BR 18; summary**) and six stationhouse videos (**BR 19, BR 20, BR 21, BR 22, BR 23 and BR 24; videos and BR 25; summaries**), none of which capture the FADO allegations.

Findings and Recommendations

Allegation (A) Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)

Allegation (B) Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)

Allegation (C) Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)

Allegation (D) Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)

Allegation (E) Force: Police Officer Garry Tuma pointed his gun at § 87(2)(b)

Allegation (F) Force: Police Officer Steven Torres pointed his gun at § 87(2)(b)

It was undisputed that PO Tuma and PO Torres pulled § 87(2)(b)'s vehicle over. Whether the officers' guns were pointed was disputed.

§ 87(2)(b) stated (BR 26 and BR 27) that as PO Tuma and PO Torres approached § 87(2)(b)'s vehicle, they had both their flashlights and guns drawn. At this time, § 87(2)(b) started feeling the symptoms of the seizure he was about to have.

PO Tuma asked § 87(2)(b) for his license and registration and who the people in the back of the vehicle were. Both officers still had their guns out and they were pointing them at the vehicle. The officers asked § 87(2)(b) who he was and at this point, § 87(2)(b) began having a seizure and went unconscious.

§ 87(2)(b) (BR 28, BR 29, BR 30, and BR 31) did not mention any officers ever having drawn or pointed their guns.

§ 87(2)(b) stated (BR 32) that she thought guns may have been drawn and pointed at everybody. The officers were also holding flashlights. § 87(2)(b) believed the officers' guns triggered § 87(2)(b)'s seizure.

PO Tuma (BR 33) and PO Torres (BR 34) both denied ever drawing their guns at any point during this incident.

PO Tuma's body-worn camera video (BR 02; *video* and BR 10; *summary*) as well as PO Torres's body-worn camera video (BR 01; *video* and BR 09; *summary*) cover the incident from the start and capture them initially approaching the vehicle up to the point that § 87(2)(b) starts seizing. Neither PO Tuma nor PO Torres ever draw or point their guns.

§ 87(2)(b), § 87(2)(g)

Allegation G: Abuse of Authority: Police Officer Garry Tuma threatened to arrest § 87(2)(b)

It was undisputed that § 87(2)(b) repeatedly refused orders by PO Tuma to provide his license and registration. PO Tuma then told § 87(2)(b) he could go to jail.

§ 87(2)(b) consistently stated (BR 28, BR 29, BR 30, and BR 31) that when PO Tuma approached the vehicle, he asked for § 87(2)(b)'s license, registration, and insurance. Before handing over his documents, § 87(2)(b) asked him what the problem was, but PO Tuma would not answer. § 87(2)(b) asked him a second time and said that he had his license, registration, and insurance, but he wanted to know why PO Tuma wanted it. PO Tuma said that they were just doing an investigation and § 87(2)(b) asked why. PO Tuma would not tell him, so § 87(2)(b) asked him to call a sergeant or a lieutenant. § 87(2)(b) continued to tell him that he would give him the documentation if he would tell him the problem. At this point, PO Tuma said that he would tell him one more time, and if § 87(2)(b) did not provide his documentation, he would go to jail. § 87(2)(b) then handed him his driver's license.

§ 87(2)(b) received two summonses: summons #§ 87(2)(b) for an inadequate break light and summons #§ 87(2)(b) for failing to comply with a lawful order (**BR 35**).

PO Tuma stated (**BR 33**) that he observed § 87(2)(b) driving in front of him with a defective left brake light. PO Tuma told PO Torres that he saw the defective brake light and then he turned on the vehicle's emergency lights and sirens to pull § 87(2)(b) over. § 87(2)(b) pulled over. PO Tuma approached the vehicle on the driver's side and PO Torres approached the passenger side. PO Tuma then asked § 87(2)(b) for his license, registration, and insurance. § 87(2)(b) refused to give his documentation and asked PO Tuma why he was being stopped. PO Tuma told § 87(2)(b) he would tell him when he provided his information. § 87(2)(b) and PO Tuma went back and forth about this and § 87(2)(b) continued to refuse to provide documentation. § 87(2)(b)'s tone was aggressive, and he was combative in terms of arguing about the paperwork. PO Tuma told § 87(2)(b) that he could be arrested if he continued to refuse to provide his documentation. PO Tuma stated during his interview that § 87(2)(b) could have been arrested for obstructing governmental administration at this point. Eventually PO Tuma told § 87(2)(b) why he had been stopped. § 87(2)(b) then handed PO Tuma his documentation. There was no other reason to stop him aside from the defective brake light.

PO Torres stated (**BR 34**) that PO Tuma asked § 87(2)(b) for his license and paperwork and § 87(2)(b) refused. PO Torres described § 87(2)(b) as angry because of this refusal. PO Tuma and § 87(2)(b) went back and forth for approximately two minutes and § 87(2)(b) continued to refuse to give his license and paperwork. § 87(2)(b) was being loud and speaking over PO Tuma and repeatedly asked why he was being pulled over. However, PO Torres did not hear PO Tuma say anything about arresting § 87(2)(b).

PO Tuma's body-worn camera video (**BR 02; video** and **BR 10; summary**) from 00:30 seconds to 01:31 seconds shows PO Tuma getting out of his vehicle and approaching § 87(2)(b)'s vehicle on the driver's side. PO Tuma asks § 87(2)(b) for his license, registration, and insurance. § 87(2)(b) asks why he is being stopped and PO Tuma tells him he will explain it to him once he provides his paperwork. § 87(2)(b) refuses to provide his paperwork if PO Tuma will not tell him why he stopped him. § 87(2)(b) tells PO Tuma to call his sergeant, and PO Tuma tells § 87(2)(b) he could go to jail twice. § 87(2)(b) refuses to give his paperwork to PO Tuma and continues to ask PO Tuma why he was pulled over.

Patrol Guide procedure 209-09 (**BR 36**) states that when issuing a summons for a VTL infraction, officers should examine driver's license, vehicle registration, and insurance identification vehicle for vehicles registered in New York State. If there is any doubt concerning the driver's identity, then an officer may remove the violator to the command for investigation.

§ 87(2)(b), § 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Garry Tuma searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (I) Abuse of Authority: Sergeant Frank Aliffi searched § 87(2)(b)

It was undisputed that PO Tuma entered § 87(2)(b)'s vehicle when § 87(2)(b) was having a seizure. It was also undisputed that PO Tuma searched § 87(2)(b)'s bag before he entered the ambulance.

§ 87(2)(b) stated (**BR 26** and **BR 27**) that after PO Tuma and PO Torres began speaking to § 87(2)(b) began having a seizure and went unconscious.

§ 87(2)(b) could not recall where he was when he came back into consciousness. He did remember that PO Tuma searched his bag while he was in § 87(2)(b)'s vehicle. PO Tuma told § 87(2)(b) that he needed to search his bag to see if he had weapons. § 87(2)(b) stated that he did not have weapons and nothing in his bag resembled a weapon and he did not have anything in it

that caused any bulges in the bag. PO Tuma then looked through § 87(2)(b)'s bag.

§ 87(2)(b) and § 87(2)(b) then walked over to the ambulance. § 87(2)(b) did not know who called the ambulance. When he was in the ambulance, PO Tuma asked § 87(2)(b) for his address, name, and date of birth. He provided PO Tuma with that information and then was taken to § 87(2)(b). No police officers accompanied him.

§ 87(2)(b) stated (BR 31) that § 87(2)(b) started having a seizure in the back seat. § 87(2)(b) told PO Tuma that they needed to get an ambulance there for § 87(2)(b). She explained that § 87(2)(b) has a condition that causes him to have slight seizures on occasion. § 87(2)(b) was shaking and tensing up and § 87(2)(b) held his head and kept him from biting his tongue. An ambulance showed up to the location. Two unmarked police vehicles showed up at the location at approximately the same time. § 87(2)(b) and § 87(2)(b) then got into the back of the ambulance.

§ 87(2)(b) stated (BR 32) that PO Tuma went to the back of the vehicle with a flashlight and began asking § 87(2)(b) questions. § 87(2)(b) began having a seizure which lasted until he got to the hospital. An ambulance was called. PO Tuma looked through § 87(2)(b)'s backpack with no explanation. PO Tuma was antagonizing § 87(2)(b) in the ambulance as well. Then § 87(2)(b) and § 87(2)(b) went to the hospital without any officers.

PO Tuma stated (BR 34) that after asking § 87(2)(b) for his license, registration, and insurance, § 87(2)(b) started having a potential seizure in the back seat. PO Tuma opened the rear driver's door in order to check on § 87(2)(b). Aside from checking on § 87(2)(b), PO Tuma had no other reason to enter the vehicle. PO Tuma checked on § 87(2)(b) and called EMS over the radio. PO Tuma stated that at this point, he thought drugs might have been involved, but it was too early to tell. PO Tuma asked § 87(2)(b) if § 87(2)(b) was on any medication. After a few minutes, § 87(2)(b) gained consciousness. PO Tuma did not observe anything on § 87(2)(b)'s person or anything about his behavior that led him to think he had a weapon. § 87(2)(b) had a backpack with him. PO Tuma asked § 87(2)(b) if he had any weapons in his bag before he went into the ambulance with EMTs and § 87(2)(b) said he did not. PO Tuma then searched § 87(2)(b)'s bag. During his CCRB interview, when asked why he searched the bag, PO Tuma said, "There were items in it, sticking out of the bag, but I could not really tell at the time."

At this point, Sgt. Aliffi was on scene, but PO Tuma did not remember Sgt. Aliffi instructing him to search the bag. PO Tuma stated that the reason he searched § 87(2)(b)'s bag because he was going to be in an ambulance with EMTs and PO Tuma wanted to make sure there were no weapons in his bag that he could hurt EMTs with. PO Tuma could not tell what objects were in § 87(2)(b)'s bag. PO Tuma did not recall if he frisked the bag before searching it.

EMS arrived and PO Tuma, § 87(2)(b) and § 87(2)(b) went into the ambulance. After a few minutes, PO Tuma left the ambulance. No officers went to the hospital with § 87(2)(b) and to PO Tuma's knowledge no officers had any further contact with § 87(2)(b) and § 87(2)(b).

Sgt. Aliffi stated (BR 37) that an ambulance arrived at the location while he was present. Sgt. Aliffi did not recall if § 87(2)(b) had a bag on his person. Sgt. Aliffi did not recall if there was any reason to believe § 87(2)(b) was armed. Sgt. Aliffi did not have an independent recollection of PO Tuma searching § 87(2)(b)'s bag. Sgt. Aliffi stated that the reason PO Tuma would have done this is for the safety of the EMS personnel in order to make sure that there was nothing in the bag that could hurt them. Sgt. Aliffi did not recall if he gave any orders to PO Tuma to search the bag. Sgt. Aliffi did not recall if he had any reason to believe the bag contained any weapons.

PO Torres stated (BR 34) that there was nothing about § 87(2)(b)'s bag that led him to think there was anything illegal inside it. He did not observe any shapes or bulges that led him to think the bag contained a weapon. He did not observe PO Tuma search the bag or hear Sgt. Aliffi give any orders to PO Tuma about searching the bag.

PO Tuma's body-worn camera video (BR 02; video and BR 10; summary) shows,

beginning at 4:12 minutes, PO Tuma at § 87(2)(b)'s door. PO Tuma opens the door and reaches in and touches § 87(2)(b)'s shoulder. PO Tuma asks § 87(2)(b) questions about § 87(2)(b)'s seizures. At 5:48 minutes, Sgt. Aliffi arrives. At 13:08 minutes, Sgt. Aliffi says something inaudible to PO Tuma. PO Tuma addresses § 87(2)(b) and says, "For EMS's safety there's no weapons in the bag if you're going to take it with you." § 87(2)(b) insists there is no weapons. At 13:40 minutes, PO Tuma searches § 87(2)(b)'s bag.

Sgt. Aliffi's body-worn camera video (**BR 03**; *video* and **BR 11**; *summary*) shows that Sgt. Aliffi was standing directly behind PO Tuma when he searches § 87(2)(b)'s bag. At 7:58 minutes, Sgt. Aliffi says, "Check his bag [...]" to PO Tuma.

Although neither PO Tuma nor Sgt. Aliffi recalled Sgt. Aliffi giving orders to PO Tuma to search § 87(2)(b)'s bag, the body-worn camera showed that Sgt. Aliffi did order PO Tuma to search § 87(2)(b)'s bag and for that reason the allegation was only pleaded against Sgt. Aliffi.

Patrol Guide procedure 216-01 (**BR 38**) states that officers are to render reasonable aid to sick or injured persons and request an ambulance upon arrival at the scene of an AIDED incident.

In *People v. Sanchez*, 38 N.Y.2d 72 (1975) (**BR 39**) the court found that a search was not permissible where the search was not based on any reasonable suspicion articulated by the police officer that he was in fear of physical danger upon feeling a "hard object," the police possessed no information linking the defendant to possession of a weapon, and no exigent circumstances were present to justify the immediate intrusion into the defendant's pockets.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Police Officer Gina Mestre searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (O) Abuse of Authority: Police Officer James Lindquist searched the vehicle in which § 87(2)(b) was an occupant.

It was undisputed that PO Mestre reached her hand through § 87(2)(b)'s passenger window and picked up an expired MTA bus operator placard from the passenger seat. PO Mestre and PO Lindquist continued to search § 87(2)(b)'s vehicle after § 87(2)(b) exited it.

§ 87(2)(b) consistently stated (**BR 28**, **BR 29**, **BR 30**, and **BR 31**) that he had an expired MTA bus operator placard that had belonged to his friend Aaron Cox inside of his glove box. PO Torres asked for § 87(2)(b)'s insurance and registration. § 87(2)(b) opened his glove box and took a few items out, including the placard. He then found his registration and handed it to PO Torres. § 87(2)(b) went to look for the insurance card in the glove box, but PO Torres told him to forget about it and step out of the vehicle.

§ 87(2)(b) stepped out of his vehicle and officers searched his vehicle. In his phone statement (**BR 30**), § 87(2)(b) stated that PO Tuma and Sgt. Aliffi searched his vehicle after he exited. In his verified statement (**BR 31**), § 87(2)(b) stated that all of the officers searched his vehicle while PO Torres frisked him. § 87(2)(b) tried to see what was happening inside his vehicle, but Sgt. Aliffi told him to get to the back of the vehicle and walked with him to the back.

After the officers searched his vehicle, Sgt. Aliffi walked over to § 87(2)(b) and asked him about the placard in his vehicle. § 87(2)(b) explained that the placard belonged to his friend § 87(2)(b) Cox, who had owned § 87(2)(b)'s previous vehicle, and § 87(2)(b) mistakenly took the placard when he took possession of the vehicle. § 87(2)(b) explained to an officer that § 87(2)(b) Cox was a city bus driver and gets parking passes every few years and this placard was expired. § 87(2)(b) also explained to the investigation that he normally had the placard hidden in his glove

compartment, not displayed when driving around or parking. During this incident, he took it out when obtaining his vehicle documentation for the officers. § 87(2)(b) said that he could call § 87(2)(b) Cox to have him verify what he was saying, but Sgt. Aliffi did not let him.

§ 87(2)(b) was arrested § 87(2)(b) for possession of stolen property (**BR 40**).

PO Mestre stated (**BR 41** and **BR 42**) that at some point, § 87(2)(b) opened his glove box. From where she was standing, PO Mestre observed an item that looked to her like a placard. It had an MTA logo on it. PO Mestre asked § 87(2)(b) if he worked for the city, but he did not answer. It looked to PO Mestre that it was unofficial and looked like it had been printed off of someone's personal computer. The font and lamination on the placard looked homemade to PO Mestre.

PO Mestre added that the expiration date and the positioning of the icons led her to believe the placard was not official. She has had experience with identifying placards from numerous vehicle stops and working with MTA officials as well as other city agencies that use placards. Prior to reaching into the vehicle, PO Mestre did not know for sure that the placard was illegal, but she thought it looked odd and the expiration date was visible to her prior to her reaching in the vehicle.

PO Lindquist stated (**BR 43**) that he did not recall where § 87(2)(b) had the MTA placard. PO Lindquist did not remember who searched § 87(2)(b)'s vehicle, but he believed some officers searched it and found the placard.

Sgt. Aliffi stated (**BR 37**) that while § 87(2)(b) was at the back of the vehicle, officers searched his vehicle. Sgt. Aliffi could not recall who searched the vehicle. He knew that officers searched the vehicle because an illegal MTA placard was retrieved from the vehicle. Sgt. Aliffi did not recall if he gave any orders to search the vehicle. Sgt. Aliffi looked into the vehicle, but he did not recall if he broke the plane of the door and actually entered the vehicle.

During his interview, Sgt. Aliffi stated they were investigating the smell of marijuana. Sgt. Aliffi could not recall if he communicated with any of the other officers about the smell of marijuana. However, he believed he and his fellow officers were on the same page, but he was unable to provide any reasons as to why he believed they also smelled marijuana. He stated that since he smelled it, he assumed that they smelled it as well.

Although Sgt. Aliffi stated during his interview that he smelled marijuana, he never mentions the odor of marijuana in his body-worn camera footage (**BR 03; video** and **BR 11; summary**), and instead cites alcohol and § 87(2)(b)'s seizure as reasons for asking § 87(2)(b) to step out of the vehicle. At 10:54 minutes, Sgt. Aliffi says, "We want to make sure you're not drinking man, your friend is seizing, you know what I mean." At 11:58 minutes, Sgt. Aliffi tells § 87(2)(b) that he "smells a little intoxicated." At 12:29 minutes, Sgt. Aliffi says, "Your friend is seizing in the back. You look intoxicated to me." None of the other officers interviewed stated they smelled marijuana. Due to inconsistent statements, § 87(2)(b) denying any odor of marijuana, and Sgt. Aliffi stating that § 87(2)(b) smelled intoxicated in his body-worn camera video, the investigation determined that there was no odor of marijuana emanating from § 87(2)(b)'s vehicle.

PO Mestre's body-worn camera (**BR 05; video** and **BR 13; summary**) shows at 00:45 seconds, PO Mestre reaching into § 87(2)(b)'s vehicle through the passenger window and grabbing an MTA placard. She then shines her flashlight in the front passenger side of the vehicle. PO Mestre asks other officers if § 87(2)(b) is an MTA bus operator. At 2:29 minutes, PO Mestre opens § 87(2)(b)'s passenger door. PO Lindquist is searching the area in the front driver's seat. PO Mestre then searches the front passenger side and mentions that the placard might be fake. She then opens the back-passenger door and searches the area in the back. At 4:04 minutes, PO Mestre asks § 87(2)(b) if he works for the MTA. He says he does not, and he drives an ambulette. PO Lindquist tells him that he has an MTA placard and he could be arrested for that.

During his interview (**BR 43**), PO Lindquist was shown a portion of PO Mestre's body-worn camera footage to which he acknowledged that he did search the vehicle, but he did not recall what led up to him searching the vehicle.

Although § 87(2)(b) alleged that Sgt. Aliffi, PO Tuma, and other officers searched his

vehicle after he exited it, the body-worn camera confirms that only PO Mestre and PO Lindquist entered the vehicle. PO Tuma did not re-enter the vehicle after assisting § 87(2)(b) Sgt. Aliffi's body-worn camera (**BR 03**; video and **BR 11**; summary) shows Sgt. Aliffi standing near § 87(2)(b)'s driver's door at 17:00 minutes, however the video does not capture Sgt. Aliffi ever entering the vehicle. For these reasons, vehicle searches were only pleaded against PO Mestre and PO Lindquist for this portion of the incident.

§ 87(2)(g)

In *People v. Galak*, 81 N.Y.2d 463 (1993) (**BR 44**), the court found that for there to be an automobile exception for a warrantless search of a vehicle to find evidence or contraband, there must be a sufficient nexus between the probable cause to search the vehicle and the arrest.

§ 87(2)(b), § 87(2)(g)

Allegation (K) Abuse of Authority: Sergeant Frank Aliffi threatened § 87(2)(b) with the use of force.

Allegation (L) Abuse of Authority: Police Officer Steven Torres frisked § 87(2)(b)

Allegation (M) Abuse of Authority: Police Officer Steven Torres searched § 87(2)(b)

It was undisputed that Sgt. Aliffi threatened to take § 87(2)(b) out of the vehicle. It was also undisputed that PO Torres frisked § 87(2)(b) when he got out of the vehicle. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated (**BR 31**) that after PO Torres told him to step out of the vehicle, § 87(2)(b) asked him why he needed to step out and that he was getting his insurance card like he had asked. PO Torres told him to step out again, and § 87(2)(b) said that he did not think it was lawful to make him get out of the vehicle and he again asked what the problem was and asked why he did not want the insurance. PO Torres told him to get out of the vehicle again and then opened the driver's door from the inside because it was locked. He then grabbed § 87(2)(b) by his left arm with both of his hands. § 87(2)(b) asked him what he was doing and asked why he was not going to check his documents first. PO Torres started to pull § 87(2)(b) out of the vehicle and then § 87(2)(b) got out of the vehicle willingly.

PO Torres then patted § 87(2)(b) down by the driver's side of the vehicle. He patted down § 87(2)(b)'s hands, arms, chest, stomach, and waist. He then lifted § 87(2)(b)'s shirt. Using two hands, he patted § 87(2)(b)'s legs. PO Torres also put his hands in § 87(2)(b)'s pockets and took his wallet out of his pants. He also took § 87(2)(b)'s cell phone out of his hand and put it in the vehicle.

§ 87(2)(b) had originally stated that PO Tuma was the officer he was interacting with during this portion of the incident, however, the investigation determined that he was interacting with PO Torres during this portion of the incident.

Sgt. Aliffi stated (**BR 37**) that he told § 87(2)(b) to step out of his vehicle for safety reasons. Sgt. Aliffi could not recall if there were any specific safety concerns he had. § 87(2)(b) was acting irate and unhappy in response to being asked to step out. Sgt. Aliffi told § 87(2)(b) that if he did not step out of the vehicle, he was committing obstruction of governmental administration (OGA)(discussed below under **Allegation N**) because he was hindering their investigation and getting in the way of them doing their job.

Sgt. Aliffi believed that PO Tuma frisked § 87(2)(b). Sgt. Aliffi did not recall if he gave any orders to any officers about frisking § 87(2)(b). Sgt. Aliffi did not recall if he observed anything on § 87(2)(b)'s person that led him to believe § 87(2)(b) might have a weapon. He did not recall if he ever spoke with any officers about why they frisked § 87(2)(b). Sgt. Aliffi stated that it was standard procedure to frisk individuals for safety.

PO Torres stated (**BR 34**) that he asked for § 87(2)(b)'s license and § 87(2)(b) told him that he had already given PO Tuma his documentation. Sgt. Aliffi then told PO Torres to take § 87(2)(b) out of the vehicle. He did not tell him why § 87(2)(b) needed to step out of the vehicle. PO Torres then told § 87(2)(b) to get out of the vehicle. § 87(2)(b) asked him why he needed to get out. PO Torres told him to get out of the vehicle two or three more times. PO Torres did not recall Sgt. Aliffi telling § 87(2)(b) that if he did not get out of the vehicle, they would pull him out.

PO Torres then patted § 87(2)(b) down on his upper body and lower body. He had to ask § 87(2)(b) to open his legs to properly pat down his legs. PO Torres frisked him for everyone's safety to make sure he did not have any weapons on him. PO Torres had not observed anything on § 87(2)(b)'s person that led him to believe that § 87(2)(b) had a weapon. He did not have any bulges on his person that led PO Torres to believe he had a weapon. PO Torres stated that whenever he has someone step out of the vehicle, he pats them down for safety purposes. PO Torres did not receive any orders to frisk § 87(2)(b). He did not go into § 87(2)(b)'s pockets or lift up his shirt.

§ 87(2)(b) had alleged that PO Torres grabbed him and pulled him out of his vehicle, however, the body-worn camera shows that PO Torres never entered § 87(2)(b)'s vehicle, and never pulled § 87(2)(b) out of the vehicle. Sgt. Aliffi's body-worn camera (**BR 03; video** and **BR 11; summary**) shows at 11:20 seconds, after PO Mestre asks § 87(2)(b) multiple times to step out of the vehicle, Sgt. Aliffi says, "We're doing an investigation, we're gonna take you out. There's no debate here. So, come out of the car or we're gonna have to pull you out. We want to make sure that we're safe here." Then § 87(2)(b) exits the vehicle on his own.

§ 87(2)(b) and Sgt. Aliffi had also misidentified PO Tuma as the officer who initially frisked § 87(2)(b). PO Torres's body-worn camera video (**BR 01; video** and **BR 09; summary**) shows PO Torres frisking § 87(2)(b) from 16:58 minutes to 17:25 minutes. Sgt. Aliffi's body-worn camera (**BR 03; video** and **BR 11; summary**) shows PO Torres frisking § 87(2)(b) from 11:38 minutes to 12:08 minutes. PO Mestre's body-worn camera (**BR 05; video** and **BR 13; summary**) shows PO Torres frisking § 87(2)(b) from 1:00 minute to 1:28 minutes. None of the body-worn camera video clips captured PO Torres entering § 87(2)(b)'s pockets or lifting up his shirt, § 87(2)(b), § 87(2)(g).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Patrol Guide procedure 221-01 (**BR 55**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

In *People v. Garcia*, 20 N.Y.3d 317 (2012) (**BR 45**), the court upheld the rule that officers may order occupants out of a vehicle and readily observe their movements due to the unique danger of a partially concealed automobile occupant.

In *People v. De Bour*, 40 N.Y.2d 210 (1976) (**BR 46**), the court found that an officer has the authority to frisk when they reasonably suspect that they are in danger of physical injury by virtue of the detainee being armed.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (N) Abuse of Authority: Sergeant Frank Aliffi threatened to arrest § 87(2)(b)

It was undisputed that § 87(2)(b) was brought to the back of his vehicle and Sgt. Aliffi said, "If you continue to give us a hard time you can go to jail, and you can explain it to a judge." It was also undisputed that § 87(2)(b) received a summons for inadequate brake lights (**BR 35**).

§ 87(2)(b) did not describe this portion of the incident in his statement (**BR 31**).

Sgt. Aliffi stated (**BR 37**) that he did not recall if he spoke with § 87(2)(b) at the back of the vehicle. When asked if there was anything § 87(2)(b) could have been arrested for when he was brought to the back of the vehicle, Sgt. Aliffi said that if he continued to give them a hard time in conducting their investigation, he could have been arrested for OGA. He could not recall if there was anything else § 87(2)(b) could have been arrested for.

Sgt. Aliffi's body-worn camera (**BR 03**; *video* and **BR 11**; *summary*) shows starting at 12:50 minutes Sgt. Aliffi accusing § 87(2)(b) of lying about his criminal history which he denies. At 13:06 minutes, Sgt. Aliffi asks § 87(2)(b) how old he is to which he replies, "Old enough." Sgt. Aliffi responds, "I'll tell you what, if you continue to give us a hard time you can go to jail, and you can explain it to a judge [...] If you don't give me a hard time maybe I'll let you go home."

During his interview (**BR 37**), Sgt. Aliffi reviewed the aforementioned section of his body-worn camera and explained that § 87(2)(b) could have been arrested for OGA. When asked what § 87(2)(b) was doing that constituted OGA, Sgt. Aliffi explained that he wanted to express to § 87(2)(b) that if he kept refusing to answer their questions, he could be arrested.

New York Penal Law § 195.05 (**BR 47**), states that a person is guilty of obstructing governmental administration when they intentionally obstruct, impair or pervert the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act.

Vehicle and Traffic law § 375(40)(b) (**BR 56**), states that every motor vehicle operated upon a public highway of the state, if manufactured after 1952, shall be equipped with at least two stop lamps, one on each side, each of which shall display a red light visible at least 500 feet from the rear of the vehicle when the brake of such vehicle is applied. Violation of this statute will result in the imposition of monetary penalties.

Patrol Guide procedure 209-09 (**BR 57**) states that officers should remove a violator to the command for investigation if doubt exists concerning their identity.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
 - [REDACTED]
- PO Tuma has been a member of service for five years and named a subject in seven additional CCRB complaints and 18 allegations, none of which were substantiated.
 - § 87(2)(g) [REDACTED].
- PO Torres has been a member of service for four years and named a subject in seven additional CCRB complaints and 13 allegations, none of which were substantiated.
 - § 87(2)(g) [REDACTED].
- Sgt. Aliffi has been a member of service for 15 years and named a subject in 12 additional CCRB complaints and 44 allegations, none of which were substantiated.
 - § 87(2)(g) [REDACTED].
- PO Mestre has been a member of service for seven years and named a subject in five additional CCRB complaints and 14 allegations, two of which were substantiated.
 - CCRB #201706534 involved a substantiated frisk allegation and a citation for failing to produce a stop report. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
 - § 87(2)(g) [REDACTED].
- PO Lindquist has been a member of service for seven years and named a subject in five additional CCRB complaint and 16 allegations, one of which was substantiated and three were citations for other misconduct.
 - CCRB #201703383 involved a substantiated allegation of a question and citations for failing to prepare a memo book and failing to produce a stop report. The board recommended Command Level Instructions and the NYPD imposed formalized training.
 - CCRB #201905320 involved a citation for improper use of a body-worn camera. The NYPD has yet to impose discipline.
 - § 87(2)(g) [REDACTED].

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- § 87(2)(b) [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]
- § 87(2)(b) [Redacted]

Squad No.: 10

Investigator: Kelly Lyon Inv. Kelly Lyon 7/30/2021
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 6/3/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date